

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000500-001 DT

11/14/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

THOMAS S ANDREJKO

JOHN R WALSTON JR.

v.

PHOENIX CITY MUNICIPAL COURT (001)
MARICOPA COUNTY (001)
B ROBERT DORFMAN (001)

MICHAEL CRUESS

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

This court has jurisdiction over special actions pursuant to the Arizona Constitution Article VI, Section 18, and Rule 4, Arizona Rules of Procedure for Special Actions.

This matter has been under advisement and the court has considered and reviewed the record of the proceedings from the respondent court, exhibits made of record and the memoranda submitted.

Acceptance of special action jurisdiction is highly discretionary.¹ Jurisdiction is generally accepted only in those cases in which "justice cannot be satisfactorily obtained by other means,"² and may be assumed to correct plain and obvious errors.³ Rule 3 of the Arizona Rules of Procedure for Special Actions states:

The only questions that may be raised in a special action are:

¹ *Pompa v. Superior Court In and For the County of Maricopa*, 187 Ariz. 531, 931 P.2d 431, 235 Ariz. Adv. Rep. 27 (App. 1997); *State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 155, 835 P.2d 485, 487 (App.1992).

² *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983); see also *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App.1996).

³ *Amos v. Bowen*, 143 Ariz. 324, 326, 693 P.2d 979, 981 (App. 1984); *State ex rel. Collins v. Superior Court of State of Arizona*, 129 Ariz. 156, 629 P.2d 992 (1981).

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- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

In the case at hand, Petitioner, Thomas S. Andrejko, was charged with operating an alarm business without a license.⁴ Petitioner received a summons on February 20, 2003, issued by the Clerk of the Phoenix City Municipal Court. Petitioner alleges that he never received the summons, as he had moved to a new address. Petitioner further alleges that the summons was returned to the Clerk with the new address label. On March 20, 2003, the Honorable Judge B. Robert Dorfman, Presiding Judge of the Phoenix City Municipal Court, issued a misdemeanor arrest warrant for Petitioner, due to Petitioner's failure to appear as required by the summons. Petitioner claims that the Clerk sent the warrant to the wrong address (the same wrong address as the summons), and thus, Petitioner was not properly and adequately served. On March 24, 2003, Petitioner filed a Motion to Dismiss and Quash Service. Phoenix City Municipal Court denied this motion on April 10, 2003. Petitioner then filed a special action with this court.

Petitioner refers this court to exhibits that are not part of the record submitted to this court. Therefore, it would be improper to consider Petitioner's unsupported assertions concerning "address return labels." Each of Petitioner's allegations concerning insufficiency of service must fail based upon the lack of supporting evidence. Petitioner, as the moving party, bears the burden of providing a sufficient record to this court in special action proceedings. Most importantly, it is unnecessary for this court to accept special action jurisdiction, when an adequate remedy by appeal is available to Petitioner. Petitioner can appeal if convicted of the charge and justice can "be satisfactorily obtained by other means."⁵

It is worth noting that I find no error in Judge Dorfman's denial of Petitioner's Motion to Dismiss and Quash Service. Rule 3.1 of the Arizona Rules of Criminal Procedure shows that the issuance and service of a summons is but one of the methods a court may use to obtain jurisdiction over a defendant. Rule 3.1 states in relevant part:

- a. Issuance. Upon presentment of an indictment, or on a

⁴ A violation of Phoenix City Code §10-72(A).

⁵ *King*, 138 Ariz. at 149, 673 P.2d at 789; see also *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App.1996).

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finding of probable cause made pursuant to Rule 2.4(a), the magistrate shall immediately issue a warrant or summons, or a notice of supervening indictment under Rule 12.7(c). Upon presentment of a complaint signed by a prosecutor, the magistrate shall immediately issue a summons or notice of supervening indictment under Rule 12.7(c) or, after a finding of probable cause, issue a warrant.

b. Preference of Summons. Unless good cause exists for the issuance of a warrant, a summons shall issue if the defendant is not in custody and the offense charged is bailable as a matter of right, and there is reason to believe that the defendant will respond to it. If a warrant is requested or issued, the prosecutor or court shall state the reasons for the issuance of the warrant rather than a summons.

c. Subsequent Issuance of Warrant. An arrest warrant shall issue if:

- (1) a defendant who has been summoned fails to appear, or,
- (2) there is good cause to believe that the defendant will fail to appear, or
- (3) **the summons cannot readily be served or delivered.**

[emphasis added]

I find that the ruling by Honorable Judge B. Robert Dorfman, of the Phoenix City Municipal Court, was neither arbitrary nor capricious, and was clearly not an abuse of discretion. The Petitioner is not entitled to the relief he has requested in this case.

IT IS ORDERED DENYING all relief as requested by the Petitioner.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT